IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.178 of 1999 and C.A.No. 813 of 1999

1. Subetha @ Sumathi
2. Ashok @ Surathi @ Ashok Kumar .. Appellants in
CA 178/02

1. Pappathi
2. Chithammal
3. Lakshmi @ Amaravathi .. Appellants in
CA 813/02
-Vs-

State by Inspector of Police
Erode North Police Station
Erode District
(Crime No.248 of 2000) .. Respondent in
both appeals

Both the criminal appeals are preferred under S.374(2) of The Code of Criminal Procedure against the judgment of the Additional Sessions Judge, Fast Court No.I, Erode in S.C.No.114 of 2001 dated 1.2.2002.

!For Appellants : Mr.N.Manokaran

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate(Crl. Side)

:COMMON JUDGMENT

This judgment shall govern both the appeals namely C.A.Nos.178 and 2 48 of 2002.
2. The appellants who were ranked as A-1 to A-5 in a case, where they were stood charged, tried and found guilty and sentenced to imprisonment, as detailed below, have brought forth the respective appeals.

Accused Charges Guilty Imprisonment

A-1 366(A), 372 IPC 366(A) - 7 years R.I. &
Rs.1,000/-
fine,
in default to

		undergo 6 months R.I.
	372 - 7 years R.I. & Rs.1,000/- fine, in default to undergo 6 months R.I.	
A-2	366(A), 372 IPC	366(A) - 7 years R.I. & Rs.1,000/- fine, in default to undergo 6 months R.I.
	372 - 7 years R.I. & Rs.1,000/- fine, in default to undergo 6 months R.I.	
A-3	366(A) r/w 109, 372 r/w 109 IPC	366(A) r/w - 7 years R.I. & Rs.1,000/- fine, in default to undergo 6 months R.I.
	3 & 5(a)(d)(ii) of Immoral Traffic (Preve- ntion) Act r/w S.109 of IPC	372 r/w 109 - 7 years R.I. & Rs.1,000/- fine, in default to undergo 6 months R.I.
		3 & 5(a)(d)(ii) of Immoral Traffic (Prevention) Act r/w 109 - 2 years R.I. & Rs.1,000/- fine each, in default to undergo 6 months R.I.
A-4	5(a)(d)(ii) of Immoral Traffic (Prevention) Act	5(a)(d)(ii) - 2 years R.I. & Rs.1,000/- fine in default to undergo 6 months R.I.
A-5	3 & 5(a)(d)(ii) of Immoral Traffic	5(a)(d)(ii) □ 2 years R.I. & Rs.1,000/- fine,

(Prevention) in default to
Act undergo 6 months
R.I.

---

3. The short facts necessary for the disposal of this appeal can be stated thus:
P.W.1 minor Leelavathy was living with her father P.W.3 Muthumani at Ashokapuram, within Erode North Police Station limits. A-1 to A-3 were residing in the adjacent houses of P.W.3. P.W.1 due to her young age was moving with A-1 to A-3 closely. On the date of occurrence namely 9.12.99, A-1 and A-2 took Leelavathy in the guise of worshipping in a temple. After the prayer was over, they asked her to wait outside and told that they would be coming back. After taking the fruits given by them, Leelavathy felt asleep. At about 10.00 P.M., A-1 and A-2 accompanied by A-3, came there, took her in an auto and at one point, they asked her to get down stating that it was Ashokapuram. After getting down, P.W.1 questioned them, since it was Erode Railway Station. She was forcibly taken by A-1 to A-3 in a train bound for Madras. When P.W.1 began to weep, the co-passengers were asking about the same. A-2 came with an answer that she was insane, and she was being taken to Madras for treatment. After reaching Madras, P.W.1 was taken by A-1 to A-3 to the house of A-4 and A-5, where they were carrying on the brothel business. A-1 to A-3 stayed there for a few days and left the place by getting a sum of Rs.10,000/- from A-4 and A-5. A-1 to A-3 informed P.W.1 that they would go for shopping and come back soon, but they left for Erode. Afterwards, P.W.1 came to know that she was sold by A-1 to A-3 to A-4 and A-5, and it was a brothel house. P.W.1 was forced to carry on the prostitution till she escaped from their custody just 10 days prior to 15.3.2000. She came to her house at Erode, met her father P.W.3 and narrated the entire episode. P.W.3 took P.W.1 to Erode North Police Station and gave Ex.P1 complaint. P.W.6 P.Duraisamy, Sub Inspector of Police, who was in charge of that Police Station, registered a case in Crime No.248/00 under Ss 120(B), 366(A), 368, 372, 376 IPC and S.3(1) of I.T.P. Act. Ex.P4 printed F.I.R. was sent to the concerned Magistrate's Court. P.W.6 took up the investigation, proceeded to the place of occurrence, prepared Ex.P3 observation mahazar and Ex.P5 rough sketch and examined the witnesses. P.W.1 was sent for medical examination. P.W.2 Dr. Sarojadoss attached to Government Hospital, Erode, examined her medically and found that she was pregnant by 22 weeks and found her age as 16 years. A copy of the accident register is marked as Ex.P2. A-1, A-2, A-3 and A-5 were arrested and remanded to judicial custody. A-4 surrendered before the concerned Magistrate's Court. On completion of the investigation, P.W.8 S.T.Rajan, Inspector of Police laid the charge sheet against the accused under the above provisions of law.
4. In order to prove its case, the prosecution examined 8 witnesses and marked 7 exhibits. After completion of the evidence on the side of the prosecution, the accused were questioned under S.313 of Cr.P. C. as to the incriminating circumstances, found in the evidence of the prosecution witnesses, which was flatly denied by them as false. No defence witness was examined. After consideration of the rival submissions and scrutiny of the materials, the trial Court found the appellants/accused guilty and sentenced

to undergo imprisonment as stated supra.
5. Advancing his arguments on behalf of the appellants, the learned Counsel raised the following points.
The trial Court in order to find the accused guilty, has mainly relied on the evidence of P.W.1, a minor. There are lot of contradictions in her evidence, making a clear deviation from her statement made to the police, which led the registration of the case. The prosecution has not brought forth any corroborative piece of evidence as to the involvement of the appellants/accused 1 to 3. The circumstances as narrated by P.W.1, as to how she was taken from the house that day; that she was made to wait between 10.00 A.M. and 10.00 P.M.; and that she was taken to Madras in a train, but she did not reveal the same to anybody, cast a doubt on the conduct of P.W.1 and hence, her testimony deserves rejection by the Court. The medical evidence did not support the ocular evidence of the prosecution. According to the prosecution, she was taken away on 9.12.1999. According to her evidence, she was forced to have intercourse the very next day namely 10.12.199 9 and she returned to Erode from Madras on 15.3.2000. But the Doctor's evidence would reveal that she was pregnant by 22 weeks. The evidence would indicate that she was pregnant even earlier to the date of occurrence namely 9.12.99, and thus, the theory of the defence that she had got love affairs with one Ganesan and with whom she had close relationship, which led her pregnancy even prior to 9.12.99, and in order to suppress the same, P.W.3 came with a false case like this should have been accepted, and the prosecution case should have been rejected. The prosecution has not proved the age of P.W.1 as 16 years. In a case like this, where the interest of the minor is involved, the law would require that the prosecution should give correct and precise evidence as to the age of the victim. In the instant case, the prosecution has thoroughly failed to do so. The complaint in the instant case was drafted by a third person, but he was not examined for the reasons best known to the prosecution. The occurrence has taken place on 9.12.99, but the complaint was given only on 15.3.2000, and there was a delay of 4 months which was inordinate, and hence, on that ground also the prosecution case should have been rejected. When P.W.1's evidence is carefully scrutinised, it would be very clear that the case was one motivated, and hence, an adverse inference under S.114(g) of the Evidence Act should have been drawn against the prosecution. No independent witness supports the case of the prosecution. Since the evidence of P.W.1 was thoroughly contrary to the charges levelled against the accused, the prosecution has not proved the age of the girl one as minor. Thus, the prosecution has failed to satisfy the ingredients as required by the provisions of either under the Indian Penal Code or The Immoral Traffic (Prevention) Act. The mere fact that one person had sexual intercourse with P.W.1 alone is not sufficient to convict the appellants under the provisions of Immoral Traffic (Prevention) Act, 1956. In view of the above doubts on the prosecution case, it cannot be stated that the prosecution has proved the case beyond reasonable doubt, and hence, the case of the prosecution should have been rejected, and the appellants/accused are entitled for an outright acquittal in the hands of the Court.
6. Contrary to the above contentions, put forth by the appellants' side, the learned Government Advocate (Criminal Side) would submit that the age of the victim was only 16 years at the time of the occurrence; that the said fact was proved not only through the evidence of P.W.1, but it was fully

corroborated by the medical evidence adduced through P.W.2 Doctor, who medically examined her and found her age as 1 6 years; that P.W.1 has thoroughly narrated the entire incident that took place on 9.12.1999, the date of occurrence, that she was taken to the temple at 10.00 A.M.; that she has also spoken how she was taken to Madras that day for the purposes of prostitution, how she was sold by A-1 to A-3 to A-4 and A-5, how she was detained there, how she was subjected to sexual assault and how she has escaped from there; that not even one reason or circumstance is brought forth by the appellants' side to cast any doubt on the testimony of P.W.1; that P.W.3, the father of P.W.1 has clearly spoken to the fact that on the date of occurrence namely 9.12.99, A-1 and A-2 came to her house and took her to the temple and that evening, he also questioned A-1 about his daughter; that A-2 replied that she was in some relations' house and she would be coming back; that on the return of P.W.1 on 15.3.2000, it was P.W.3 who took his daughter to give a complaint, on the basis of which a case was registered and investigation was taken up; that the criminal acts of A-4 and A-5 who were running a brothel house at Korattur, Madras and where she was kept in custody for nearly about 3 months and forced to do prostitution, have been clearly narrated; that in view of the available evidence, either all or any one of the contentions put forth by the appellants' side does not require any consideration; that the lower Court has found them guilty only on proper and careful consideration of the evidence available, and hence, the lower Court's judgment has got to be sustained.

7. This Court paid its full attention on the rival submissions and made a thorough scrutiny of the entire materials available.

8. The gist of the prosecution case is that P.W.1, a minor girl, was taken to a temple on 9.12.1999 by A-1 and A-2; that they made her wait till 10.00 P.M.; that accompanied by A-3, A-1 and A-2 took the minor by train to Madras, took her to the brothel house of A-4 and A-5 and sold her for Rs.10,000/- for the purposes of carrying on the prostitution; that A-1 to A-3 returned leaving the victim in the house of A-4 and A-5, and P.W.1 who was under the clutches of A-4 and A-5 for a period of 3 months, was able to escape taking advantage of the absence of A-4 and A-5 one day and came back to Erode on 15.3.2000, when she took her father to the Police Station and gave a complaint to P.W.6, who registered the case. Admittedly, P.W.1 is the daughter of P.W.3 and A-1 to A-3 are the neighbours of P.W.3. From the evidence of P.W.3, it is quite evident that on the date of occurrence namely 9.12.99, A-1 and A-2 took her to the temple at about 10.00 A.M. According to the evidence of P.W.1, after taking her to the temple and the prayer was over, A-1 and A-2 gave her plantain, which she was asked to take, and on taking the plantain, she felt drowsy and sleepy, and A-1 and A-2 left the place and returned at about 10 P.M. along with A-3, and they took her in an auto and asked her to get down in a place stating that it was Ashokapuram, and after getting down, P.W.1 found that it was the railway station of Erode, and A-1 to A-3 forcibly took her and all of them boarded the train bound for Madras, and when she came to smell about the illegal activities of A-1 to A-3, she began to weep, and when the same was questioned by the co-passengers, A-2 answered stating that she was insane and hence, she was taken to Madras for treatment, and the next day morning, when they got down at Madras, A-1 to A-3 took her to the house of A-4 and A-5. Further in her evidence it is also added that she witnessed A-1 to A-3 receiving money from A-4 and A-5, and representing that

they are going for shopping, A-1 to A-3 returned to Erode. All the above factual aspects that P.W.1 a minor was procured for the purposes of prostitution, and she has also been sold by A-1 to A-3 to A-4 and A-5, who were running a brothel house in Madras have been clearly spoken to and proved by the evidence through P.W.1. The evidence of P.W.1, on close scrutiny, has inspired the confidence of the Court. No one of the appellants before the trial Court was able to point to any circumstance or reason why P.W.1 a young victim of 16 years old must come forward and narrate the entire story, where her modesty and chastity are involved. The Court is of the view that the circumstances would strongly go against the appellants.

9. The next contention that the prosecution has not properly proved the age of the minor cannot also be accepted. It is a case where the prosecution has not only relied on the evidence of P.W.1 victim, but also on the evidence of the Medical Officer, who examined her medically. According to the medical person, her age was 16 years, and that part of the evidence is in tact, and hence, the evidence of P.W.1 that she is 16 years old is fully corroborated by the evidence of the medical person, and the same would be suffice to hold that she was proved to be a minor.

10. The next contention that the case of the prosecution that P.W.1 was taken from her house at about 10.00 A.M. and asked to wait till 1 0.00 P.M. cannot be ordinarily accepted, because it is opposed to the normal human conduct. This contention cannot be countenanced for the simple reason that after taking the fruits given by A-1 and A-2, she felt drowsy and sleepy, and hence, she had no occasion to speak to others outside. So also the next contention that at the time when she was taken to board a train bound for Madras, she has not complained of the acts committed by the accused to anyone has got to be rejected. According to P.W.1, when she began to weep, the co-passengers have asked A-1 to A-3, and the same was replied by A-2 stating that she was insane and hence, she was taken for treatment to Madras, and thus, they managed to explain the suspicious circumstance that arose that time. Further, P.W.1 has clearly narrated that she was under the clutches and custody of A-3 and A-4 who were running a brothel house, and she was forced to have sexual intercourse with number of persons during the period of three months, and she was subjected to sexual assault, and she had the narrow escape on a day when A-4 and A-5 were absent and came down to Erode, where she made the complaint. Thus, on the face of the evidence available, the lower Court was perfectly correct in coming to the conclusion that a minor girl was procured for the purposes of prostitution, and she has also been sold by A-1 and A-2 to A-4 and A-5, and the same was abetted by A-3, and A-4 and A-5 were running a brothel house, where they subjected P.W.1 a minor, for prostitution. The lower Court was right in finding A-1 and A-2 guilty under Ss 366(A) and 372 I.P.C., A-3 under S.366(A) r/w 109 of I.P.C. and Ss 3 and 5(a)(d)(ii) of Immoral Traffic (Prevention) Act, A-4 under S.5(a)(d)(ii) of Immoral Traffic (Prevention) Act and A-5 under Ss 3 and 5(a)(d)(ii) of Immoral Traffic (Prevention) Act. The Court is of the view that there is nothing to interfere in the conviction recorded by the Court below. The sentence imposed by the lower Court on A-4 and A-5 has got to be sustained. So far as the sentence of 7 years R.I. imposed by the lower Court on A-1 to A-3 for the said offences is concerned, taking into consideration the facts and circumstances, the same has got to be reduced to 5 years R.I.

11. In the result, the criminal appeal in C.A.178/02 is dismissed,

confirming the judgment of the lower Court. The Sessions Judge shall take steps to commit the appellants/A-4 and A-5 to prison, if they are on bail, to undergo the remaining period of sentence.

12. In the result, the sentence of 7 years R.I. awarded by the lower Court on A-1 to A-3 is modified, and A-1 and A-2 shall undergo R.I. for 5 years each under Ss 366(A) and 372 of I.P.C. and A-3 shall undergo R.I. for 5 years each under Ss 366(A) r/w 109 and 372 r/w 109 I. P.C. In other respects, the judgment of the lower Court is confirmed. With the above modification, the criminal appeal in C.A.No.813 of 2002 is dismissed.

Index: Yes

Internet: Yes

To:

1) The Additional Sessions Judge Fast Track Court No.1,Erode
2) The Additional Sessions Judge Fast Track Court No.1,Erode
Thro' The Principal Sessions Judge, Erode.
3) The Judicial Magistrate No.1, Erode.
4) The Judicial Magistrate No.1, Erode,
Thro' The Chief Judicial Magistrate, Erode.
5) The Superintendent, Central Prison, Vellore.
6) The Public Prosecutor, High Court, Madras.
7) The D.I.G. of Police, Chennai 4.
8) Mr.V.Jaya Prakash Narayanan, Government Advocate
(Crl. Side), High Court, Madras.
9) The Inspector of Police, Erode North Police Station,
Erode District.

nsv/